

Duff on Hospitality Law

Job Assistance Ordinance Update

By Jared Van Kirk on 6.11.13 | Posted in Employment Law

Jared Van Kirk is a member of Garvey Schubert Barer's [Labor and Employment](#) group and previous blog contributor. Jared has been following City Council discussions surrounding the newly enacted Job Assistance Bill for some time. Thank you, Jared, for this timely and very important update for all hospitality industry employers in Seattle. – Greg

On June 10, the Seattle City Council passed the “Job Assistance Ordinance,” which limits the ways in which most Seattle employers can acquire and consider the criminal history of job applicants and current employees. This City ordinance will become effective on November 1, 2013 and will require many Seattle employers to change their hiring forms and processes and their policies and procedures related to employee discipline and discharge.

The ordinance applies to all employers with even one employee, but excludes all governments except the City of Seattle. Employees and applicants are covered if they perform (or would perform) at least 50% of their work in Seattle. Importantly, the ordinance does not apply to positions in law enforcement, policing, crime prevention, security, criminal justice, or private investigation services or those which may provide unsupervised access to children under sixteen years of age, developmentally disabled persons, or vulnerable adults.

The ordinance will prohibit employers from categorically excluding applicants with arrest or conviction records. To comply, employers must eliminate such exclusions from job postings and other advertisements, as well as from their internal hiring process.

In addition, employers may only perform background checks or ask applicants for information about their arrest or conviction records after first screening applications and resumes to eliminate unqualified applicants. As a result, applications for covered positions may no longer require disclosure of arrest or conviction history and background checks must be delayed until an applicant has passed an initial application/resume screen.

The ordinance also restricts the actions employers can take based on criminal history information. Employers must make changes to their internal hiring, discipline, and discharge policies and procedures to be consistent with these limitations. Employers may not take any adverse action based solely on an arrest, but may inquire about the circumstances related to the arrest. Employers may not reject an applicant or discipline or discharge an employee based on conduct that led to an arrest, conviction, or pending charge without a “legitimate business reason.” A “legitimate business reason” is a good faith belief that the nature of

the underlying criminal conduct will negatively impact the applicant's or employee's ability to perform the job or will cause harm or injury to people, property, business reputation, or business assets.

Identifying a "legitimate business reason" will add complexity and documentation to hiring, discipline, or discharge decisions based on criminal history information. Although the standard is likely not as demanding as the "undue hardship" standard familiar in disability accommodation situations, the ordinance does require an employer to consider several specified factors before concluding that there is a legitimate business reason – consideration that a prudent employer will need to support and document.

Finally, the ordinance creates procedural rights that may also change the way many employers hire and discharge employees. Before taking any adverse action against an applicant or employee based on criminal history information, the applicant or employee must be informed of the information being considered and given an opportunity to respond to the information. The employer must hold a position open for at least two business days to give an applicant or employee the opportunity to respond.

The ordinance will be enforced by the Seattle Office for Civil Rights, and provides for monetary penalties and attorneys' fees, but it does not provide applicants and employees with a private right of action.

The full text of the recently passed Job Assistance Bill is available [HERE](#). Please contact [Jared](#) or [me](#) if you have questions. Stay tuned - Jared will keep us updated on the Bill and offer practical guidance in an upcoming installment.

Tags: Job Assistance Ordinance